## **CCRB INVESTIGATIVE RECOMMENDATION**

Investigator:		Team:	CCRB Case #:	☐ Force	☑ Discourt.	☐ U.S.
Erin Sweeney		Squad #11	201603090	✓ Abuse	O.L.	☐ Injury
Incident Date(s)		Location of Incident:	•	Precinct:	18 Mo. SOL	EO SOL
Sunday, 04/03/2016 4:20 PM				10	10/3/2017	10/3/2017
Date/Time CV Reported		CV Reported At:	How CV Reported:	Date/Time	Received at CCI	RB
Mon, 04/04/2016 1:57 PM		IAB	Phone	Mon, 04/1	1/2016 11:07 AN	Л
Complainant/Victim	Туре	Home Addre	ess			
Witness(es)		Home Addre	ess			
Subject Officer(s)	Shield	TaxID	Command			
1. POM Peter Marter	18790	927136	010 PCT			
2. POM Timothy Finn	02795	951733	010 PCT			
Officer(s)	Allegatio	on		Inve	estigator Recon	nmendation
A.POM Peter Marter	Abuse: P	O Peter Marter stopped				
B.POM Timothy Finn	Abuse: P	O Timothy Finn stopped	d			
C.POM Peter Marter	Abuse: P	O Peter Marter threaten	ed to arrest			
D.POM Timothy Finn	Abuse: P	O Timothy Finn threate	ned to arrest			
E.POM Peter Marter	Discourte	esy: PO Peter Marter spe	oke discourteously to	0		
F.POM Peter Marter	Abuse: P	O Peter Marter threaten property.	ed to seize			
G.POM Timothy Finn	Discourte	esy: PO Timothy Finn sp	poke discourteously	to		
H.POM Timothy Finn	Abuse: P	O Timothy Finn frisked				
I.POM Timothy Finn	Abuse: P	O Timothy Finn searche	ed			
J.POM Timothy Finn		O Timothy Finn interference ording device.	red with			
K.POM Timothy Finn	Abuse: P recording	O Timothy Finn searche g device.	ed			
L.POM Timothy Finn	Abuse: P	O Timothy Finn deleted electronic device.	l information on			
§ 87(4-b), § 87(2)(g)						

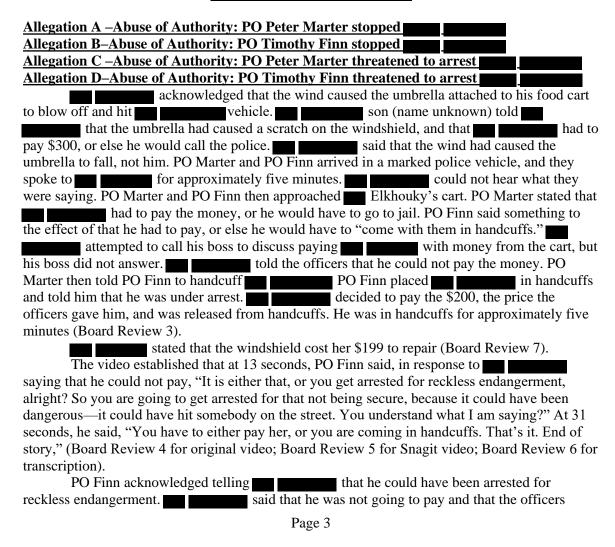
## **Case Summary**

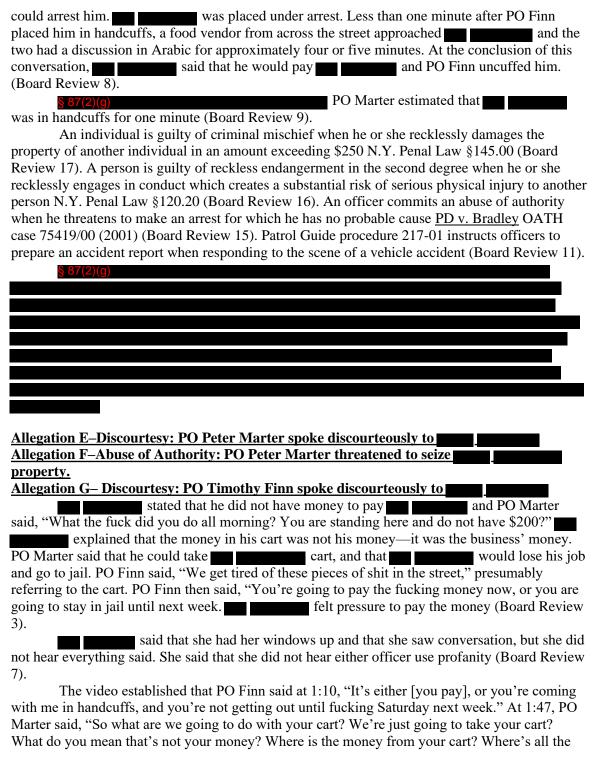
On April 3, 2016, at approximately 4:20 p.m., at
Manhattan, was working at a food cart that belongs to his friend when the wind
caused his umbrella to detach from the cart. The umbrella hit and cracked the windshield of a
parked vehicle belonging to called 911 to report the incident, and
PO Peter Marter and PO Timothy Finn of the 10 <sup>th</sup> Precinct arrived at the scene. PO Marter and
PO Finn stopped (Allegations A and B). PO Marter and PO Finn each told
that if he did not pay for the windshield, he would go to jail (Allegations
C and D). said that he did not have the money to pay and PO Marter
allegedly said, "What the fuck did you do all morning?" (Allegation E). PO Marter said he was
going to take cart (Allegation F). PO Finn stated, "It's either [you pay], or
you're coming with me in handcuffs, and you're not getting out until fucking Saturday next
week," and allegedly stated, "We get tired of these pieces of shit in the street," and "You're going
to pay the fucking money now or you're going to stay in jail until next week," ( <b>Allegation G</b> for discourtesy; threat of arrest is subsumed in <b>Allegation D</b> ). PO Finn placed in
discourtesy; threat of arrest is subsumed in <b>Allegation D</b> ). PO Finn placed in handcuffs and told him he was under arrest (subsumed in <b>Allegation B</b> ). PO Finn then frisked
and searched (Allegations H and I). As he searched him, he retrieved
cell phone from the back left pocket of his pants. PO Finn allegedly deleted the video
on the phone before placing the phone inside of <b>Solution</b> jacket ( <b>Allegations J, K</b> and <b>L</b> ).
PO Marter is cited for failing to prepare a memo book entry (Allegation M).
said he would pay and PO Finn released him from the handcuffs.
paid and was neither arrested nor issued a summons.
This case was reassigned to Investigator Erin Sweeney on June 8, 2016, following
Investigator Nora Stephen's departure from the CCRB.
§ 87(2)(g)
Manhattan South Investigations is conducting a concurrent investigation.
was able to recover the video footage from his phone, and he provided it
to the investigation (Board Review 4 for original video; Board Review 5 for Snagit video; Board
Review 6 for transcription).
201603090_20160617_1127_DM.mp4
201003030_20100017_1121_DIVI.IIIP4
Mediation, Civil and Criminal Histories
• § 87(2)(b)
On June 10, 2016, a Notice of Claim was requested from the New York City Office of
the Comptroller. It will be added to the case file upon receipt (Board Review 1).
•
Civilian and Officer CCRB Histories
• This is first complaint with the CCRB (Board Review 2).

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- PO Marter has been a member of service for 15 years. He has 34 total allegations in 18 cases (including this one). In case numbers 200904931 and 201310993, he was cited for failing to prepare a memo book entry. In case 200409671, a discourtesy was alleged, and it was closed as complainant uncooperative. In case 200508549, threat of arrest and discourtesy were alleged, and they were closed as unsubstantiated. In case 200800004, a discourtesy was alleged, and it was unsubstantiated. In 201404944, discourtesy and stop allegations were closed as complainant uncooperative. In case 201509104, a stop and threat of arrest were exonerated. There are no other patterns or substantiations.
- PO Finn has been a member of service for four years. He has 12 allegations in three cases (including this one). In case number 201305219, vehicle search, threat of arrest, and discourtesy allegations were closed as unsubstantiated. There are no substantiations or other patterns.

## **Findings and Recommendations**





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money that you have been making?" (Board Review 4 for original video; Board Review 5 for Snagit video; Board Review 6 for transcription).

PO Finn said that he never said, "We get tired of these pieces of shit in the street." PO Finn did not recall PO Marter saying, "What the fuck did you do all morning? You are standing here and do not have \$200?" PO Finn did not recall saying, "You are going to pay the money right now, or you are going to stay in jail until next week," or anything similar. PO Finn first stated that he did not recall if he or PO Marter used any profanity during this incident. Upon viewing the video, he acknowledged saying "fucking." When asked why he used profanity, he said that he did not know (Board Review 8).

PO Marter did not recall using any profanity during this incident and did not recall PO Finn using any profanity. PO Marter did not specifically recall saying that cart could have been taken from him if he was arrested, but said that he might have said this, because it was true—the cart would have been vouchered as part of the arrest process (Board Review 9).

According to Patrol Guide procedure 218-01, officers may seize property as arrest evidence, investigatory evidence, forfeiture, decedent's property, found property, safekeeping, peddler property, or to determine the property's true owner (Board Review 10). According to Patrol Guide procedure 203-09, officers must be courteous and respectful (Board Review 14).

§ 87(2)(g)
Allegation H—Abuse of Authority: PO Timothy Finn frisked  Allegation I—Abuse of Authority: PO Timothy Finn searched  Allegation J—Abuse of Authority: PO Timothy Finn interfered with  a recording device.  Allegation K—Abuse of Authority: PO Timothy Finn searched  device.  Allegation L—Abuse of Authority: PO Timothy Finn deleted information on
recording device.
Immediately after handcuffing PO Finn patted down front left pants pocket, and then put his hand inside this pocket for approximately three seconds. PO Finn then patted down front right pants pocket and put his hand inside this pocket. PO Finn then patted down right front jacket pocket, and then placed his hand inside this pocket. PO Finn then patted down the two pockets on the right and left inside panels of packet, which was unzipped, and then placed his hand inside this pockets. PO Finn then patted down right back jeans pocket and placed his hand inside this pocket, then PO Finn patted down the back left pocket, and then placed his hand

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inside. PO Finn retrieved cell phone from his left back pants pocket. PO Finn
then looked at the phone and asked if recorded the conversation.
responded that he had recorded the conversation.
that had been recording on his phone. PO Finn then placed phone inside
inside jacket pocket. After the incident, a friend provided with
instructions on how to retrieve a deleted video, and he was able to do so successfully (Board
Review 3).
PO Finn stated that when said the officers could arrest him, PO Finn
considered under arrest. He patted down as part of the arrest
procedure. began to reach for something in his jacket pocket, and PO Finn, not
knowing what he was reaching for, also reached toward the pocket, and pulled out his cell phone.
PO Finn saw that the phone was recording, so he pressed stop because he did not want
phone to die. There was no other reason why he stopped the video. PO Finn did not
delete the video. PO Finn then put the cell phone back in pocket (Board Review
8).
PO Marter stated that he never saw PO Finn take cell phone or delete
anything off his cell phone (Board Review 9).
Officers are entitled to conduct a frisk and search of an individual incident to an actual
arrest, not just probable cause that might have led to an arrest, but did not. People v. Reid 24
N.Y.3d 615 (2015) (Board Review 18).
According to Patrol Guide 208-03, civilians are permitted to photograph, videotape, and
record police actions (Board Review 12). Officers must possess a warrant in order to conduct a
search of a cell phone People v. McGee 841 N.Y.S.2d 827 (Crim. Ct. N.Y. Cty. 2007) (Board
Review 19).
§ 87(2)(g)
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§ 87(2)(g)
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§ 87(2)(g)

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§ 87(4-b), § 87(2)	)(g)		
Squad: 11			
Investigator:			
	Signature	Print	Date
Cauad Landam			
Squad Leader:	Title/Signature	Print	Date
	Title/Signature	TIHIL	Date
Reviewer:			
	Title/Signature	Print	Date